

# Memorandum



**Date:** March 21, 2006

**To:** Honorable Chairman Joe A. Martinez and Members,  
Board of County Commissioners

Agenda Item No. 14(A)(4)

**From:** George M. Burgess  
County Manager

**Subject:** Joint Participation Agreement between the City of Miami and Miami-Dade County for  
Street Improvements

## **RECOMMENDATION**

It is recommended that the Board approve the attached resolution authorizing the execution of a Joint Participation Agreement (JPA) between the City of Miami and Miami-Dade County for the County to construct specific portions of the City's right-of-way improvements project immediately adjacent to the Performing Arts Center (PAC). Costs for the improvements are not-to-exceed the amount of \$741,000 and will be reimbursed by the City of Miami. Furthermore, it is recommended that Resolution R-377-04 providing for a reconsideration period be waived.

## **BACKGROUND**

As part of the area-wide enhancements surrounding the PAC, the Omni Community Redevelopment Agency (CRA) through the City of Miami's Department of Capital Improvements and Transportation (CIT), will be implementing right-of-way improvements to the roads surrounding and leading to and from the PAC. Work will consist primarily of reconstructing/milling and resurfacing of the asphalt within the roadways, replacement of curbs and gutters, installation of storm drainage, sidewalk repairs where applicable, the installation of sidewalk pavers, and the installation of "area specific" decorative street and pedestrian lighting.

Current improvements to the area are being performed by the County, the CIT and the Florida Department of Transportation (FDOT). In order to minimize multiple contractor conflicts and manage these improvements in the most cost and time effective manner, it was agreed that the County should include as part of its construction project, that portion of the work directly adjacent to the PAC. The County, through the Performing Arts Center Builders (PACB), will be responsible for the construction, supervision and inspection of the work. The City of Miami has agreed to reimburse the County for the improvements, through the JPA.

The JPA defines the responsibilities of the City of Miami and the County for their respective portions of the work, as described above, regarding design and construction; including the CIT furnishing the decorative light poles and fixtures. The CIT will also complete the balance of the road improvement work on roads and sidewalks adjacent to the PAC area prior to the completion of the PAC on August 4, 2006. The JPA also defines the maintenance responsibilities: 1. The Performing Arts Center Trust will be responsible for the maintenance of the light poles, fixtures and bases within the boundaries of the PAC; and 2. the City of Miami Community Redevelopment Agency will be responsible for the roadway, curb, gutter, sidewalk

Honorable Chairman Joe A. Martinez and Members,  
Board of County Commissioners  
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pavers, light poles, fixtures and bases outside of the PAC boundary. The City of Miami has intended that the design of this project serve as the pilot for continued streetscape and road improvements in the Omni Entertainment District.

As part of the JPA, the City of Miami has also agreed to reimburse the County for additional design costs incurred by the firm of Pelli Clarke Pelli Architects for an amount not to exceed \$16,000.

Included is a copy of the JPA as Attachment "A".

A handwritten signature in black ink, appearing to read "Rita Johnson". The signature is written in a cursive style with a large, looping "J" at the end. It is positioned above a horizontal line.

Assistant County Manager



# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Joe A. Martinez **DATE:** March 21, 2006  
and Members, Board of County Commissioners

**FROM:** Murray A. Greenberg  
County Attorney

**SUBJECT:** Agenda Item No. 14(A)(4)

Please note any items checked.

- ☒ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Bid waiver requiring County Manager's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ Housekeeping item (no policy decision required)
- ☐ No committee review

Approved \_\_\_\_\_ Mayor

Agenda Item No. 14(A)(4)

Veto \_\_\_\_\_

03-21-06

Override \_\_\_\_\_

**RESOLUTION NO.** \_\_\_\_\_

**RESOLUTION AUTHORIZING EXECUTION OF A JOINT PARTICIPATION AGREEMENT BETWEEN THE CITY OF MIAMI AND MIAMI-DADE COUNTY TO CONSTRUCT SPECIFIC PORTIONS OF THE CITY'S RIGHT-OF-WAY IMPROVEMENTS PROJECT IMMEDIATELY ADJACENT TO THE PERFORMING ARTS CENTER; COSTS FOR THE IMPROVEMENTS ARE NOT-TO-EXCEED THE AMOUNT OF \$741,000 AND WILL BE REIMBURSED BY THE CITY OF MIAMI; AUTHORIZING THE COUNTY MANAGER OR HIS DESIGNEE TO EXERCISE THE PROVISIONS THEREIN; WAIVING REQUIREMENTS OF RESOLUTION NO. R-377-04**

**WHEREAS**, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that this Board approves the Joint Participation Agreement (JPA) between the City of Miami and Miami-Dade County, to construct specific portions of the City's right-of-way improvements project immediately adjacent to the Performing Arts Center (PAC), costs for the improvements are not-to-exceed the amount of \$741,000, to be reimbursed by the City of Miami, in substantially the form attached hereto and made a part hereof; and authorizes the County Manager or his designee to execute same for and on behalf of Miami-Dade County and to exercise the provisions contained therein; and hereby waives the requirements of Resolution No. R-377-04.

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and upon being put to a vote, the vote was as follows:

Sen. Javier D. Souto

The Chairperson thereupon declared the resolution duly passed and adopted this 21<sup>st</sup> day of March, 2006. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.

Deborah Bovarnick Mastin

DBM

**JOINT PARTICIPATION AGREEMENT  
CITY OF MIAMI AND MIAMI-DADE COUNTY  
PERFORMING ARTS CENTER STREET IMPROVEMENTS**

This AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 200\_, by and between the CITY OF MIAMI, FLORIDA, a municipal corporation of the State Of Florida, hereinafter referred to as the "CITY", and MIAMI-DADE COUNTY, a political subdivision of the State of Florida, hereinafter referred to as the "COUNTY"

**WITNESSETH**

WHEREAS, the COUNTY is funding, managing and supervising the development of the Performing Arts Center of Greater Miami ("PAC"), a regional cultural facility and community resource that is currently under construction and is located within the area bounded by NE 14<sup>th</sup> Street, N. Bayshore Drive, NE 13<sup>th</sup> Street and NE 2<sup>nd</sup> Avenue; and

WHEREAS, the COUNTY and the CITY wish to facilitate certain capital improvements to the rights-of-way surrounding the PAC more particularly described in Exhibit A (the "PROJECT") attached hereto and incorporated herein; and

WHEREAS, the parties wish to utilize their respective resources to design, construct and administer the PROJECT, subject to the terms and conditions of this agreement; and

WHEREAS, the parties further wish to designate the maintenance responsibilities to be assumed by each upon the completion of the PROJECT;

NOW, THEREFORE, in consideration of the promises and covenants contained herein, the parties agree:

**1 EFFECTIVE DATE AND TERM.** This Agreement shall commence upon execution and shall terminate upon completion and close-out of the PROJECT. PROJECT construction is to be

completed by the August 2006 opening of the PAC. The City and County Managers may extend the term of this Agreement upon mutual consent, affected by an amendment to this Agreement.

## **2 RESPONSIBILITIES OF CITY**

The CITY shall provide the materials, equipment and/or funding detailed in Exhibit A, in addition to the services described herein below. The Director of the Department of Capital Improvements and Transportation ("DIRECTOR" and "DEPARTMENT" respectively) shall be the CITY'S authorized representative to manage all aspects of the CITY's responsibilities hereunder.

**2.1 Financial Contribution:** CITY shall contribute funds to COUNTY, in the maximum amount of \$741,000 for eligible expenses, as defined herein, incurred by COUNTY for the design, construction and administration of the PROJECT. The CITY shall disburse funds to the COUNTY for the PROJECT in the manner set forth in this Agreement. The CITY shall not be liable for any cost, expense or fee in excess of \$741,000, except as provided in Section 4 of this Agreement.

**2.2 Funding Source:** The funds available for this PROJECT are:

<u>Funding Amount</u>	<u>Funding Source</u>	<u>Fiscal Year of Commitment</u>
\$741,000	Community Redevelopment Agency Funds	2005-2006

**2.3 Design:** The CITY has secured and will oversee engineering services for the design of the lighting within the designated PROJECT area pursuant to an existing Professional Services Agreements between CITY and A & P Consulting Transportation Engineers (the "Design Firm"). The COUNTY will provide all other design necessary for the completion of the PROJECT. The COUNTY will secure engineering design services to provide complete construction documents and

provide post-design services including construction contract administration for all aspects of the PROJECT excluding lighting design, which will be provided by Design Firm which has been retained by the CITY. Both Parties agree that the retention and discharge of the Design Firm shall be the sole responsibility of the CITY in accordance with applicable laws and City procedures. Retention and discharge of all other engineering design firms shall be the sole responsibility of the COUNTY, also in accordance with applicable laws and City procedures.

**2.4 Permits and Approvals.** During the course of design, the DEPARTMENT shall identify all necessary permits and shall coordinate the review of construction documents by utilities and permitting agencies such as the Miami-Dade County Water and Sewer Department and the Department of Environmental Resources Management. The CITY shall make all necessary adjustments as required for approval and/or permitting by those agencies. It has been determined that acquisition of additional right of way is not required. The DEPARTMENT will assist the selected Contractor(s) in obtaining all necessary CITY permits, and utility adjustments for the PROJECT in accordance with applicable State, Federal and Local Laws and ordinances.

### **3 RESPONSIBILITIES OF COUNTY**

**3.1 Construction.** The COUNTY shall procure the services of a properly licensed contractor to construct the PROJECT. The COUNTY may award the construction contract through any available lawful means which, in the COUNTY's discretion, affords the most competitive price for construction of the PROJECT and allows completion by the deadline, including, but not limited to, bid solicitation, request for proposals, the award of a change order on existing COUNTY contract(s), or the extension of unit-prices provided in connection with prior competitive bid awards.



The construction contract shall provide that the PROJECT be completed not later than AUGUST 2006. The construction contract shall contain a contingency amount to address unforeseen conditions and owner required changes which shall not exceed twenty-five percent (25%) of the base amount of the contract, unless otherwise approved by designated representatives of the CITY and COUNTY. Subsequent to the evaluation of bids or proposals by the COUNTY and prior to the COUNTY's acceptance of a bid or proposal, the COUNTY shall provide said evaluation to the DIRECTOR for review and comment. The parties agree that the selection, retention and discharge of such contractor shall be the responsibility of the COUNTY.

**3.2 Accounting and Records:** The COUNTY shall at all times maintain separate accounting for the costs of the PROJECT so those costs may be independently verified and audited by the CITY, at the request and cost of the CITY. COUNTY shall additionally maintain and provide to DEPARTMENT with each reimbursement request, a list of all subcontractors engaged in the PROJECT.

**3.3 Claims & Change Orders:** The COUNTY shall notify the CITY in writing when claims or change orders arise. The COUNTY shall invite the CITY to participate in negotiations of these claims and change orders.

**PROJECT COST ADJUSTMENTS:** The amount committed by CITY is based on the current estimated costs of the PROJECT. The Parties recognize that adjustments to the above-referenced costs may be required in the future and that at the option of the parties, amendments may be entered into to revise the funds committed for the PROJECT. Provided that prior legislative authorization for funding is in place, additional amendments may be executed by the CITY and COUNTY MANAGERS. Otherwise, further funding commitments shall be subject to the approvals of the parties' respective legislative boards. Subject to the approval of the CITY Commission, any necessary construction changes arising out of the resolution of design issues

and any additional charges incurred solely as a result of the CITY's failure to adhere to the established delivery schedule of the light posts and light fixtures for the lighting portion of the Project (not later than April 14, 2006) which precludes the contractor from prosecuting the work on a timely manner, are at the sole expense of the CITY, including direct costs of work, acceleration, or delay costs incurred by the COUNTY.

**4 SCHEDULE & MANNER OF REIMBURSEMENTS:** Attached hereto as Exhibit A is a copy of the estimated budget for the PROJECT. CITY shall furnish COUNTY with any and all revisions thereto. At the time of construction contract award for this PROJECT, the COUNTY shall submit the Estimated Quarterly (or Monthly) Construction Payout Schedule for the PROJECT to the CITY. CITY shall reimburse COUNTY for funds it expended for the work described in Exhibit A, upon receipt of COUNTY invoice identifying completed work, accompanied by copies of contractor invoices or pay applications, releases of liens, evidence of COUNTY payment, and/or such additional documents deemed appropriate by CITY. The reimbursement of funds to the COUNTY shall be based upon COUNTY-approved invoices with certified copies of payment requests attached.

**5 CONSTRUCTION ADMINISTRATION AND INSPECTION.** The COUNTY shall exercise all responsibilities of the "owner" under the construction contract, including construction administration and inspections. The COUNTY may delegate this function to an authorized agent or Construction Engineering Inspector or Observer (CEI/CEO consultant). The CITY may assign an inspector who shall have an oversight role in the routine daily inspections. In the case of a disagreement over the interpretation of the plans, the COUNTY's designated representative shall have final authority. The CITY's Engineer and the COUNTY's designated representative shall jointly perform the inspection of the PROJECT which immediately precedes substantial completion. Final payment to the COUNTY and the

obligation of maintenance responsibility of the Parties shall be subject to the final acceptance of the PROJECT by the CITY. The COUNTY shall certify upon completion that the PROJECT has been constructed pursuant to the design plans, specifications and approved change orders.

**6 ELIGIBLE EXPENSES:** The Parties agree that only the below identified expenses that may be incurred by the COUNTY and that are directly related to the PROJECT, including both hard and soft costs, are eligible for reimbursement, provided adequate documentation accompanies the reimbursement request in the form of approved invoices, verified payment requests, documented journal entries, and/or check vouchers. Construction-related costs for the work specifically identified in Exhibit A incurred by the COUNTY after October 1, 2005 and prior to the effective date of this Agreement shall also be subject to reimbursement provided they qualify as Eligible Expenses as defined herein.

- Construction and Construction-related costs for work elements described in Exhibit A
- Limited architectural/engineering fees related solely to the work described in Exhibit A
- Construction Engineering Observation / Inspection Services if required and only in excess of that already being provided for the COUNTY's existing project for the construction of the PAC **AUDIT**.

**8** The COUNTY agrees to permit the CITY's auditors to inspect the books, records and accounts of the PROJECT for three years after completion of the PROJECT. These records shall be made available to the CITY for inspection within five (5) working days upon written receipt of a written request from COUNTY. Audits shall be conducted at the CONTRACTOR's cost and expense.

9 **INDEMNIFICATION.** To the extent permitted by **Section 768.28, Florida Statutes**, the parties agree to indemnify each other for liability due to any act of omission, neglect or wrongdoing of a party or any of its officers, agents, or employees. Further the parties agree to defend each other against any and all such claims or demands which may be claimed and have arisen as a result of or in connection with the parties' participation in this Agreement. Nothing contained herein shall be construed to contradict the provisions of **Section 768.28, Florida Statutes**, nor shall this Article be construed to require either party to indemnify the other for the negligent acts of the other.

10 **MAINTENANCE RESPONSIBILITIES.** Upon completion of the PROJECT, the parties will assume maintenance responsibilities as set forth below:

COUNTY	CITY
<ul style="list-style-type: none"><li>• Light poles, fixtures and bases within the boundaries of the PAC stated herein, through the PAC Trust</li></ul>	<ul style="list-style-type: none"><li>• Roadway, curb and gutter</li><li>• Sidewalk pavers outside of PAC boundary</li><li>• Light poles, fixtures and bases outside of PAC the boundary, though the Miami Community Redevelopment Agency</li></ul>

11 **NOTICES.** Any and all notices required to be given under this agreement shall be sent by first class mail, addressed as follows:

To the: COUNTY

Attention:

Bill Johnson  
Assistant County Manager  
Miami-Dade County  
111 NW First Street  
Miami, FL 331--  
(305) 375-2300

To the CITY:

Attention:

Mary H. Conway, P.E.  
Director, Department of Capital Improvements and Transportation  
City of Miami  
444 S.W. 2<sup>nd</sup> Avenue, 10<sup>th</sup> Floor  
Miami, Florida 33233-0708  
(305) 416-1027

**12     DISPUTE RESOLUTION, APPLICABLE LAW.** The parties shall resolve any disputes, controversies or claims between them arising out of this Agreement in accordance with the "Florida Governmental Conflict Resolution Act", Chapter 164, Florida Statutes, as amended. This Agreement shall be governed by the laws of the State of Florida. Venue in any proceedings shall be in Miami-Dade, Florida.

**13     ENTIRE AGREEMENT, AMENDMENTS.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms contained herein shall be effective unless set forth in writing in accordance with this section. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the parties.

**14     JOINT PREPARATION.** The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties from the other.

**15     COMPLIANCE WITH LAWS.** The parties shall comply with applicable federal, state and local laws, codes, ordinances, rules and regulations in performing their respective duties, responsibilities, and obligations pursuant to this Agreement and with all applicable laws relating to the PROJECT. The parties shall not unlawfully discriminate in the performance of their respective duties under this Agreement.

**16     SEVERANCE.** In the event a portion of this Agreement is found to be invalid by a court of competent jurisdiction, the remaining provisions shall continue to be effective unless the CITY or COUNTY elect to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

IN WITNESS WHEREOF, the parties hereto set their hands and official seals the day and year first above written.

ATTEST:

MIAMI-DADE COUNTY, a political sub-  
division of the State of Florida

BY: \_\_\_\_\_

BY: \_\_\_\_\_  
George Burgess, County Manager

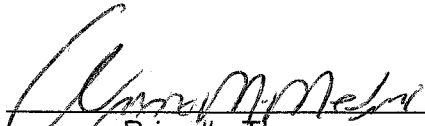
(affix seal)

Approved by County Attorney  
as to form and legal sufficiency

\_\_\_\_\_  
Print Name \_\_\_\_\_


ATTEST:

BY:

  
Priscilla Thompson  
City Clerk

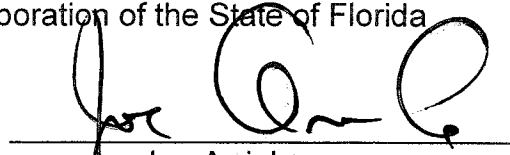
(Affix City Seal)

Approved by City Attorney  
as to Legal form and correctness:

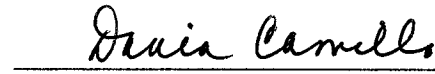
  
Jorge L. Fernandez  
City Attorney

CITY OF MIAMI, a municipal  
corporation of the State of Florida

BY:

  
Joe Arriola  
City Manager

Approved to Insurance Requirements:

  
Dania Carrillo, Administrator  
Risk Management

**EXHIBIT A-1**  
**PAC Streetscape**  
**SCOPE OF WORK - MIAMI-DADE COUNTY**

COUNTY will furnish all labor, materials, equipment and supervision to perform the work outlined below at the locations specified and in accordance with the plans and specifications furnished by CITY.

**ITEM 1 - Work Description: Light Pole and Light Fixture Installation**

Location	Limits
South side of NE 14th Street	NE 2nd Avenue to the West side of Biscayne Boulevard
South side of NE 14th Street	East side of Biscayne Boulevard to North Bayshore Drive
North Side of NE 13th Street	NE 2nd Avenue to the West side of Biscayne Boulevard
North Side of NE 13th Street	East side of Biscayne Boulevard to North Bayshore Drive
West side of Bayshore Drive	NE 13th Street to NE 14th Street
East side of NE 2nd Avenue	NE 13th Street to NE 14th Street

**ITEM 2 - Work Description: Light Pole Base and Hand Hold Installation**

Location	Limits
South side of NE 14th Street	NE 2nd Avenue to the West side of Biscayne Boulevard
South side of NE 14th Street	East side of Biscayne Boulevard to North Bayshore Drive
North Side of NE 13th Street	NE 2nd Avenue to the West side of Biscayne Boulevard
North Side of NE 13th Street	East side of Biscayne Boulevard to North Bayshore Drive
West side of Bayshore Drive	NE 13th Street to NE 14th Street
East side of NE 2nd Avenue	NE 13th Street to NE 14th Street

**ITEM 3 - Work Description: Milling and Resurfacing**

Location	Limits
South Side of NE 13th Street	Biscayne Boulevard to North Bayshore Drive
North Side of NE 14th Street	NE 2nd Avenue to the West side of Biscayne Boulevard
North Side of NE 14th Street	East side of Biscayne Boulevard to North Bayshore Drive

**ITEM 4 - Work Description: Pavement Striping**

Location	Limits
South Side of NE 13th Street	Biscayne Boulevard to North Bayshore Drive
North Side of NE 14th Street	NE 2nd Avenue to the West side of Biscayne Boulevard
North Side of NE 14th Street	East side of Biscayne Boulevard to North Bayshore Drive

**ITEM 5 - Work Description: Curb and Gutter Installation**

Location	Limits
South Side of NE 13th Street	Biscayne Boulevard to North Bayshore Drive
North Side of NE 14th Street	NE 2nd Avenue to the West side of Biscayne Boulevard
North Side of NE 14th Street	East side of Biscayne Boulevard to North Bayshore Drive



## **EXHIBIT A-1**

### **ITEM 6 - Work Description: Data Line Conduit Stub-outs**

<b>Location</b>	<b>Limits</b>
Across NE 13th Street	Between NE 2nd Avenue and the West side of Biscayne Boulevard
Across NE 13th Street	Between East side of Biscayne Boulevard and North Bayshore Drive
Across NE 2nd Avenue	Between NE 13th Street and NE 14th Street
Across NE 14th Street	Between NE 2nd Avenue and the West side of Biscayne Boulevard
Across NE 14th Street	Between East side of Biscayne Boulevard and North Bayshore Drive

### **ITEM 7 - Work Description: Electrical Conduit Stub-outs**

<b>Location</b>	<b>Limits</b>
Across NE 13th Street	Between NE 2nd Avenue and the West side of Biscayne Boulevard
Across NE 13th Street	Between East side of Biscayne Boulevard and North Bayshore Drive
Across NE 14th Street	Between NE 2nd Avenue and the West side of Biscayne Boulevard
Across NE 14th Street	Between East side of Biscayne Boulevard and North Bayshore Drive

**CITY will furnish all light poles and fixtures listed for above Item 1 as detailed in Exhibit A2-4.**

**EXHIBIT A-2**

**COST ESTIMATE SUMMARY**

**Value of Work Performed by COUNTY**

<b>Item</b>	<b>Estimated Cost</b>
<b>A2-1:</b> All Work – South Side of NE 13 <sup>th</sup> Street from NE 2 <sup>nd</sup> Ave to North Bayshore Drive	\$124,800
<b>A2-2:</b> All Work – South Side of NE 14 <sup>th</sup> Street from NE 2 <sup>nd</sup> Ave to North Bayshore Drive	\$459,225
<b>A2-3:</b> All Work – Installation of poles and fixtures, construction of pole foundation within PAC boundary	\$140,625
<b>Allowance</b> for COUNTY Architectural / Engineering fees, subject to the approval of DIRECTOR	\$16,000
	\$740,650 <i>Rounded \$741,000</i>

**EXHIBIT A-2**  
**ENABLING LEGISLATION**